

**BEFORE THE
CASE REVIEW PANEL**

In The Matter of Ashley Nicole Cazee,)	
Petitioner)	
and)	CAUSE NO. 112601-14
The Indiana High School Athletic Assoc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS

Procedural History

Ashley Nicole Cazee (hereafter, the Student) is a fifteen-year-old sophomore (d/o/b February 19, 1986) presently attending Martinsville High School in the MSD of Martinsville (hereafter, collectively referred to as “Martinsville”). She attending Center Grove High School in the Center Grove Community School Corporation (hereafter, collectively referred to as “Center Grove”). The Student attended Center Grove for middle school as well. She is an accomplished basketball player. This was the only sport she participated in during her freshman year, although she did play on the junior varsity team. On June 19, 2001, the Student, through Martinsville, filed with the Indiana High School Athletic Association (IHSAA) the IHSAA Athletic Transfer Report, seeking full eligibility for the 2001-2002 school year. Center Grove, however, indicated that it believed the move from Center Grove to Martinsville was primarily for athletic reasons in violation of **Rule C-19-4**.¹ Martinsville sought full

¹The Indiana High School Athletic Association (IHSAA) has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule 19**, which governs transfers and eligibility, is common to all athletes. **Rule C-19-4**, which governs transfers for primarily athletic reasons, prohibits a student from participating in interscholastic athletic competition for 365 days from the date of enrollment in the new school. This rule is intended “[t]o preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons...[,]” especially where there

eligibility for the Student under **Rule C-19-5**, asserting the Student's parents' change of residence was a "bona fide" change of residence.²

The IHSAA assigned the matter to one of its assistant commissioners, who interviewed pertinent staff from Center Grove and Martinsville, as well as the parents of the Student. The Student was never made available for an interview.

On August 3, 2001, the assistant commissioner indicated that the results of her investigation lead to the conclusion the move was primarily for athletic reasons, in contravention of **Rule C-19-4**. Accordingly, the Student was not eligible for interscholastic competition sanctioned by the IHSAA for 365 days.

The Student appealed the results of the investigation to the IHSAA's Review Committee under **Rule C-17-4**. The review was conducted on November 13, 2001, with the written decision issued on November 16, 2001. The Review Committee upheld the conclusion of the investigation that the Student's transfer was primarily for athletic reasons.

APPEAL TO THE CASE REVIEW PANEL

The Student, on November 26, 2001, appealed to the Case Review Panel (CRP) the adverse decision of the IHSAA Review Committee. All parties were notified of their hearing rights on that date. The Student's parents, on November 30, 2001, requested that the hearing be open to the public. A review hearing date was originally established for December 7, 2001. However, the Student's counsel requested a continuance on December 5, 2001, which was granted. The hearing was rescheduled for December 14, 2001. A notice of the review hearing was posted, as required of public agencies by Indiana's Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. The Student did not appear in person but was represented by her counsel and parents. Respondent appeared by counsel and its Commissioner.

The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of

has been "undue influence." Respondent also defines under **Rule 19** "transfer for primarily athletic reasons," in relevant part, as "a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics[.]" All references herein are to the IHSAA's By-Laws for the 2001-2002 school year.

²The IHSAA defines "bona fide change of residence" for **Rule 19** purposes as a fact-sensitive matter. However, the original residence must be abandoned as a residence and not used by any member of the student's immediate family as a residence. In addition, the student's entire immediate family must make the change of residence and take with them the household goods and furniture appropriate to the circumstances.

Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a student, parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.³

The parties appeared on December 14, 2001, and presented evidence, testimony, and argument in support of their respective decisions. This matter raised several novel issues for the CRP. It is the first case where documentation central to the core issue was primarily hearsay documentation in the form of e-mail exchanges. Many of the e-mail exchanges were provided as a part of the IHSAA's initial investigation. Although admittedly hearsay, the results of the IHSAA's investigation and the decision of the IHSAA Review Committee constitute the record that is accepted for the purpose of the CRP's conduct of a hearing under the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3 *et seq.* The CRP's function is review the student eligibility decision before it. This is technically not an appeal of the IHSAA's investigation or its procedures; rather, it is a review of its ultimate decision. As such, the documentation the IHSAA relied upon is germane to its ultimate decision regarding the Student's eligibility. This does not mean that subsequent documentation of a hearsay nature provided during the CRP hearing process avoids challenge.

It is also noted that the IHSAA's investigation was hampered by the lack of opportunity to interview the Student, who could have authenticated e-mails attributed to her. The Student did not appear at the IHSAA Review Committee proceedings, nor did she appear to testify at the CRP hearing. Although she is not required to be present or to testify, the absence of any testimony leaves the decision-maker in the position of constructing from collateral sources the meaning and intent of the Student's attributed statements. Because more than one reasonable conclusion could be reached when considering all testimony, the CRP does not find fault with the investigation process of the IHSAA. The investigation spanned five weeks and was thorough. The assistant commissioner was considerate of the parents and provided opportunities for them to supplement the record to explain the reasons for their move from Center Grove to Martinsville. Because this is an investigation and not an adjudication, the IHSAA does not have subpoena power and could not compel the Student to be interviewed. The parents elected not to have her testify or be interviewed in any of these processes; they proffered sufficient reasons for declining to do so.

In addition, much was made during the hearing regarding the failure of Center Grove to conduct an investigation of its own under **Rule C-17-2.1**.⁴ However, this by-law requires an investigation by the building principal only where there is the possibility an IHSAA rule "may have been violated." In this

³CRP Members Mark Mason, Gerald McLeish, and Earl H. Smith, Jr., did not participate in this matter.

⁴**Rule C-17-2.1** requires, in pertinent part, the building principal to conduct an investigation "[w]hen it comes to a principal's attention that a Rule may have been violated...."

dispute, it has never been alleged nor was there a finding that any IHSA rule was violated. Center Grove was under no compunction to conduct any investigation of its own, but it did have a duty—due to its IHSA membership status—to assist the IHSA in its investigation. **Rule C-17-1.2.**

Based upon the record as a whole, including testimony and documentation, the following Findings of Fact are determined.

FINDINGS OF FACT

1. The Student is a fifteen-year-old sophomore (d/o/b February 19, 1986) attending Martinsville. She is one of five children. The Student played junior varsity basketball as a freshman while attending Center Grove (2000-2001 school year). Basketball was the only sport the Student participated in during her freshman year.
2. The current Martinsville girls' basketball coach previously coached at Center Grove. He also was the Student's teacher during her eighth grade year in middle school at Center Grove. Sometime during November of 2000, a Center Grove coach was scouting Martinsville during a basketball game at Martinsville. He saw the Student and another basketball player who was moving out-of-state. He also saw the Student's parents present at the game. He inquired as to the girls' presence at the game. They indicated they came to the game so the one girl could say good-bye to the Martinsville coach before she moved out of state. They also indicated the Martinsville coach told them if they ever came to Martinsville, there would be jerseys waiting for them. The parties generally agree that this remark was made in jest. The Martinsville coach does not recall making such a statement but allowed that it could have happened. He reiterated that such a remark would have been in jest. He had known the Student and her friend for many years, from middle school on, and had been the Student's social studies teacher in her eighth grade.⁵
3. Although not known to the administration of Center Grove at the time the IHSA was conducting its investigation, the Student's family was in some turmoil, such that the Student's parents' marriage was foundering. There had been heated exchanges between the father and two of the older children. The mother's mother lived in Bloomington and has become

⁵This dispute is replete with unfortunate circumstances that, at first blush, appear improper but then can be explained. The presence of the parents at the Martinsville game was not due to dissatisfaction with Center Grove or the coaching philosophy of its coaches. Rather, as the Center Grove assistant coach noted, given the Student's age, "How else was she to get to the game?" Although taken aback when he first saw the parents at the game, their presence did not seem so odd upon further reflection.

increasingly frail. Anticipated college expenses for the children also weighed in favor of a move to a smaller house with a smaller mortgage. In addition, the youngest child was struggling academically and required more assistance. The extent of the marital difficulties was not provided in any elaborate form, other than the physical location of the Center Grove residence exacerbated the situation. The marital difficulties appear to have been genuine concerns.

4. The Student did not want to move from Center Grove. Described by various witnesses as a “wallflower,” she is apparently uncomfortable in social situations and finds it difficult to express herself in direct discussions. She is more comfortable communicating through e-mail. Although meetings were occurring between the family and Center Grove personnel regarding her, the parents did not want her to be aware that these meetings were occurring.
5. When the Student was in the seventh grade, her father met with the high school girls’ coach to discuss the Student’s possible future in the high school basketball program. The coach indicated this was unusual for the parent of a seventh grade student to do so. It is not uncommon for the parent of an 8th grade student, however. This meeting occurred around April of 1999. The father also met with the coach in December of 2000 to discuss the Student’s progress in the basketball program. At that time, the Student was one of three freshmen playing on the junior varsity team. There was also an incident where the Student was recalcitrant at a basketball practice shortly before holiday break. The Student later apologized to the coach, although the coach’s reaction to her apology was apparently misunderstood. The Student interpreted his non-response as a disinclination to accept her apology. The coach did not believe he had given such an impression. He had accepted the apology. The incident did not affect the Student’s playing status. The coach and the assistant coach both acknowledged the Student would have competed for a starting role on this year’s Center Grove varsity squad had she remained a student there.
6. After the incident at the basketball practice, the Center Grove coach was approached by a coach from another school district who knew the Student. This other coach inquired as to the incident. An informal discussion ensued. When the Student’s father learned of this exchange, he became greatly concerned.⁶ The father was also concerned because the Student was included in the 18 names submitted for the basketball sectionals but wasn’t one of the eventual

⁶The Student’s father is the principal at a public elementary school in a different school district. Allusions were made to the Family Educational Rights and Privacy Act (FERPA), the federal law implemented through 34 CFR Part 99 that is intended to protect the confidentiality of personally identifiable records in a student’s education record. The Student’s father would be aware of this law and its requirements, and apparently believes this exchange between the two coaches contravenes FERPA requirements. However, as was explained at the hearing in this matter, Center Grove is not a party to this hearing.

12 actually included on the active roster. The parents believe the Student should have been advised directly that she was not to be include don the active roster. The coach telephoned the father around February 5, 2001, during which the father expressed his concerns.

7. A meeting was held on March 7, 2001, which was attended by the parents, the coach, the assistant coach, the athletic director, and the assistant athletic director. Although perceptions of the meeting differ, the meeting lasted between 80-90 minutes during which the father again expressed his concern regarding the discussion of his daughter with the coach from the other school district. He also had compiled basketball statistics and was somewhat critical of some of the basketball drills employed by the coach, although the parents do not recall this latter discussion. The parents do not believe that the discussion was primarily about basketball; the school personnel believe that basketball constituted the majority of the discussion. School personnel believe the meeting adjourned amicably. The parents believe that their concerns had remained unresolved. At the end of the meeting, the father apparently made a statement to the effect that if their concerns are not addressed, “they may have to look elsewhere.” Different witnesses provided different verbiage, including changing the “they” to “she” to refer to the Student.⁷ Although school officials termed the statement something of a threat, they also reported the meeting ended amicably.
8. The Center Grove assistant coach, who is also the junior varsity coach and was one of the Student’s teachers at this time, had a series of e-mail exchanges with the Student. He testified that the Student was the only student that he communicated with in this fashion, and that the parents were aware and kept advised. The Student asked the assistant coach about the meeting that occurred at school. She had learned that her parents were at the school, ostensibly from the Martinsville coach. She was also aware that her parents did not want her to know of the meeting. The assistant coach advised the Student’s parents and asked for guidance in how to respond. The father indicated that he did not want the Student to know of the meeting. The father did not ask the assistant coach to mislead the Student. However, when the Student asked the assistant coach the next day about the meeting, he denied the meeting had occurred.⁸

⁷The assistant coach reported the final statement as “Why should she stay here?” As with much of the other statements and occurrences in this matter, the statement is subject to alternate interpretations, especially given the father’s apparent unhappiness with the coach’s discussion of his daughter with another coach, the father’s perception that the coach did not provide sufficient reciprocity when the Student apologized for her recalcitrant behavior, and the father’s unhappiness that his daughter was not advised directly that she would not be on the active roster for the sectional.

⁸The Martinsville coach still lives in the Center Grove community. He had heard there was a meeting with the Center Grove coach. This was the extent of his knowledge about the March 7, 2001, meeting.

9. The month following the aforementioned meeting (April of 2001), the Student's parents listed their Center Grove residence for sale. Rumors began to circulate that the Student was moving. The assistant coach, by e-mail, asked the Student about the rumors. By an e-mail response, the Student responded that the decision to move "wasn't my choice." She indicated that she enjoyed Center Grove and but did not believe she could convince her parents not to move. She also opined that "I guess my parents don't like [the basketball coach]." Her e-mail does not explain further what the parents did not like about the basketball coach.⁹ The Student also asked the assistant coach not to inform her father about her e-mail message to him, but the assistant coach advised the father anyhow.
10. The parents explained that they had intended to move prior to the start of the 2000-2001 school year, but delayed the move because the Student's older brother had not completed his junior year at Center Grove. He wanted to invoke his "senior rights" by completing his junior year so he could attend Center Grove his senior year despite not having legal settlement.¹⁰ The parents eventually sold the Center Grove house and moved into a housing development just north of Martinsville. Although the IHSAA Athletic Transfer Report was filed in June of 2001, the Student was not officially enrolled in Martinsville until August 6, 2001. The Student's younger brother has been enrolled in a Martinsville elementary school with a significantly smaller student population than at his Center Grove school, enabling him to receive tutorial assistance for his academic activities. The parents, when visiting Martinsville, engaged in review of academic offerings, especially for the younger son, rather than meeting with coaches or the athletic director to discuss the Student's basketball potential. The move to Martinsville does place the mother closer to her mother. The mortgage payments are nearly \$600 lower than the payments for the Center Grove home.
11. After the Student was informed of the IHSAA's original decision, the parents contacted the Center Grove superintendent. She referred the parents to the Center Grove high school principal. An e-mail message from the principal to the parents (Exhibit P-2, admitted without objection) related the principal's activities in reviewing Center Grove's position with respect to the Student's transfer, including the principal's exploring whether partial athletic reasons might

⁹Again, this statement is subject to alternative interpretations. Did the parents disagree with the coach's philosophy? The Student's playing time? Or did the parents not like the coach because of the perceived breach of confidentiality and perceived lack of forthrightness in addressing the Student's concerns about her apology and failing to make the active roster for the sectional? These two e-mails were critical to the IHSAA's investigation, but without the Student's explanation, the statements are subject to the interpretation the IHSAA accorded them when denying the Student eligibility.

¹⁰I.C. 20-;8.1-6.1-1(a)(7) permits a student who has completed his 11th grade year to attend the school for his 12th grade year even though his family has moved to another school district.

affect the eligibility determination. The meeting with the parents occurred on or about October 5, 2001. The e-mail was sent on or about October 17, 2001. The principal advised the parents to exercise their right to seek review of the investigation by the IHSAA's Review Committee, which the parents eventually did (see *supra*). The parents provided additional details and justifications for their move during the October 5, 2001, meeting.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The parents timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. To the extent that the Student challenges the thoroughness of the IHSAA's investigation by its assistant commissioner that resulted in the IHSAA's ruling that she is not eligible for interscholastic competition in IHSAA-sanctioned athletic events, the investigation was thorough. Information was sought from the affected schools. The parents had opportunities to supply additional information to the assistant commissioner, which they did. However, the lack of availability of the Student to be interviewed left information originating from the Student subject to alternative interpretations. The conclusion reached by the IHSAA, based on the information available to it, was reasonable.
3. Center Grove is not a party to this dispute. Nevertheless, to the extent the Student is challenging the actions of Center Grove in not initiating an independent investigation under **Rule C-17-2.1**, the CRP concludes Center Grove was not required to do so. There was no allegation that any by-law of the IHSAA had been broken.
4. The CRP obtained testimony from the parties that was not provided in sufficient detail to the IHSAA during its investigation. Substantial and reliable evidence indicates that the move from Center Grove to Martinsville was not *primarily* for athletic reasons but was also for reasons related to a marriage under stress, one child's desire to satisfy the "senior rights" requirement of the legal settlement statute, the need to be closer to the parent of one spouse, the need to obtain more individualized academic services for another child, and the need to cut costs by moving into a smaller home with a smaller mortgage. However, because an central and important

witness—the Student herself—was never made available to explain comments attributed to her, the presence of some athletic motivation cannot be conclusively ruled out.

5. The move from Center Grove to Martinsville was not to obtain any athletic advantage. Although there is some evidence to suggest the move was related somewhat to a disagreement with the Center Grove’s coach’s philosophy, what this philosophy may have been was never stated. Evidence and testimony indicate that the move was motivated in part by disagreements with the coach’s actions and non-actions, particularly his discussion of the Student with a coach from another school district. This is not the same as a disagreement with a coaching philosophy. The Student was not faced with any punitive action by school officials or coaches that such a move might negate. Although it cannot be said that the move was *primarily* for athletic reasons, this being the necessary qualifier, it likewise cannot be said that there existed no athletic motivations, given the disagreement over the active roster for the sectionals and the early onset of parental concern about the Student’s role in the Center Grove basketball program.

ORDERS

1. The Case Review Panel, based upon the foregoing Findings of Fact and Conclusions of Law, hereby modifies, pursuant to I.C. 20-5-63-7(c)(3)(B), the determination of the Indiana High School Athletic Association regarding Ashley Nicole Cazee.
2. Ashley Nicole Cazee shall have “limited eligibility” to participate in interscholastic competition sanctioned by the Indiana High School Athletic Association, as this term is defined in **Rule 19**, and that she shall have such “limited eligibility” for 365 days from her date of enrollment. She shall have full eligibility after August 6, 2002.
3. The decision of the Case Review Panel is a unanimous one.

DATE: December 17, 2001

/s/ John L. Earnest, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.